

ID: CCA_2009010612015137

Number: **200910034**

Office:

Release Date: 3/6/2009

UILC: 6227.02-00

From:

Sent: Tuesday, January 06, 2009 12:01:56 PM

To:

Cc:

Subject: RE: Closing AAR w/ NBAPs issued

Generally we should issue the FPAA if we opened a TEFRA proceeding in response to an Administrative Adjustment Request filed by the Tax Matters Partner. Section 6227(c)(2)(A) allows us to (1) issue refunds; (2) conduct a TEFRA proceeding; or (3) take no action. We followed option number 2.

Technically, we could just issue the refunds and not issue the FPAA since the regulations relating to NBAPs state that the issuance of an NBAP does not mean that we must ultimately issue an FPAA. Treas. Reg. 301.6223(a)-2. But we would need extensions of the period for issuing a refund by securing the form for extending the 2 year AAR petition period under section 6228(a)(2)(D). Refunds must be issued within this 2 year period (as may be extended). See I.R.C. sec. 6230(d)(2).

Issuing the FPAA has the advantage of automatically extending the refund period for the 150 day petition period plus 2 years under section 6230(c)(2)(B)(ii). It also has the added advantage of extending the period for assessment allowing us to assess any partners who may have filed inconsistently with the partnership return and AAR. So issuing an FPAA is probably the best policy choice, allowing all refunds and deficiencies resulting from the AAR to be processed.